



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 4, 1998

Ms. Susan M. Cory  
General Counsel  
Texas Workers' Compensation Commission  
Southfield Building, MS-4D 4000 South IH-35  
Austin, Texas 78701-7491

OR98-2602

Dear Ms. Cory:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID # 119507.

The Texas Workers' Compensation Commission (the "commission") received a request for information covering:

- 1) a complete list of all times Dr. Gary Freeman has been appointed as a required medical examiner or a commission appointed designated doctor for the previous five year period;
- 2) the date of the required medical exam or designated doctor's appointment, if known;
- 3) whether Dr. Freeman certified maximum medical improvement and, if so, the date of his certification of maximum medical improvement;
- 4) the percentage of impairment assessed by Dr. Freeman, if applicable.

You seek to withhold the requested information as exempt from disclosure by statute pursuant to section 552.101 of the Government Code. You contend that section 402.083(a) of the Labor Code excepts the requested information from disclosure. In addition, you argue that the request concerns the results of a doctor's examination of a patient and "violates the confidentiality provisions of the Medical Practice Act" and "common law privacy rights of the individuals whose records are the subject of this request." You submitted several reports

of medical evaluation as representative samples of documents from which the requested information is derived. We note that Dr. Gary Freeman is not the physician who completed any of the submitted reports.

We have considered the exceptions you claim and have reviewed the documents at issue. This office has ruled that Labor Code Section 402.083 protects only the information in or derived from a claim file that explicitly or implicitly reveals the claimant's identity. Open Records Decision No. 619 at 3 (1993). However, in our opinion, the requested information is derived from medical records subject to the Medical Practices Act.

Section 5.08(b) of the Medical Practices Act provides:

"Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section."

V.T.C.S. art. 4495b, §5.08(b). The requested information is derived from a record of the evaluation of a patient by a physician.<sup>1</sup> Therefore, you must withhold the requested information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Emilie F. Stewart  
Assistant Attorney General  
Open Records Division

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Ref: ID# 119507

Enclosures: Submitted documents

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<sup>1</sup>Having decided that the requested information is exempt from disclosure under the Medical Practices Act, we will not reach the issue of whether the requested information is protected from disclosure by a common law right to privacy.

cc: Mr. Larry G. Trimble  
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(w/o enclosures)